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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE LAMONT FARMER,

Defendant and Appellant.

B174883

(Los Angeles County  
Super. Ct. No. MA024868)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Thomas R. White, Judge. Dismissed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson,  
Supervising Deputy Attorney General and John Yang, Deputy Attorney General, for  
Plaintiff and Respondent.

Defendant, Andre Lamont Farmer, who represented himself in the trial court, appeals from an order denying his motion to withdraw his nolo contendere plea. (Pen. Code, § 459.) We noted defendant had failed to acquire a probable cause certificate. (Cal. Rules of Court, rule 30(b); Pen. Code, § 1237.5.) We have a duty to raise issues concerning our jurisdiction on our own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) We issued an order to show cause concerning possible dismissal of his appeal. Defendant contends that his failure to obtain a probable cause certificate is excused under the doctrine of constructive filing. We dismiss the appeal because defendant did not obtain in a timely manner the required probable cause certificate.

On November 11, 2004, defendant pled nolo contendere to first degree burglary charge. On March 5, 2004, defendant's motion to withdraw his nolo contendere plea was denied and he was sentenced. On March 19, 2004, defendant filed a notice of appeal. However, defendant failed to secure a probable cause certificate. Defendant has failed to fully and timely comply with both Penal Code section 1237.5 and California Rules of Court, rule 30(b). (*In re Chavez* (2003) 30 Cal.4th 643, 651; *People v. Mendez* (1999) 19 Cal.4th 1084, 1099.) Without a probable cause certificate, defendant cannot appeal. (*People v. Kaanehe* (1977) 19 Cal.3d 1, 8; *People v. Ribero* (1971) 4 Cal.3d 55, 61; *People v. West* (1970) 3 Cal.3d 595, 600-601; *People v. Ward* (1967) 66 Cal.2d 571, 574-576.)

There is no merit to defendant's contention that he can be excused from obtaining a probable cause certificate because the trial court did not advise him of his right to appeal. The trial court is required by California Rules of Court, rule 4.305, the notice of appeal, "After imposing sentencing . . . upon conviction after trial . . . , the court shall advise a defendant of his or her right to appeal, of the necessary steps and time for taking an appeal, and of the right of an indigent defendant to have counsel appointed by the reviewing court." But there is no requirement that the court specifically have advised defendant of his need to acquire a probable cause certificate. Nor was the trial court

required to inform defendant of his need to acquire a probable cause certificate at the time he submitted his notice of appeal.

Further, there is no merit to the defendant's contention that, under *In re Benoit* (1973) 10 Cal.3d 72, 78-89, and the instructive filing doctrine he should be permitted to file a probable cause certificate request now. Originally, under the constructive filing doctrine, a notice of appeal was deemed filed when an incarcerated defendant delivered the notice of appeal to prison employees. (*In re Jordan* (1992) 4 Cal.4th 116, 130-131; *People v. Slobodion* (1947) 30 Cal.2d 362, 366-367.) In *Benoit*, the doctrine of constructive filing was expanded to deem a notice of appeal to be timely filed when its untimely filing was due the negligence of the trial counsel. (*In re Chavez, supra*, 30 Cal.4th at pp. 657-658, citing *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 669.)

The criteria for application of the principle of constructive filing are not present. There was no delay in filing the probable cause certificate due to the conduct of prison employees. Nor did the defendant attain any assurances from the trial counsel that at any time the attorney would obtain a probable cause certificate. The constructive filing doctrine is inapplicable to defendant's failure to secure a probable cause certificate. (*In re Chavez, supra*, 30 Cal.4th at pp. 653-654; *People v. Aguilar* (2003) 112 Cal.App.4th 111, 112-116.)

The appeal is dismissed.

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TURNER, P.J.

We concur:

GRIGNON, J.

ARMSTRONG, J.